

BOARD OF FORESTRY AND FIRE PROTECTION

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MINUTES
BOARD OF FORESTRY AND FIRE PROTECTION
September 10, 11, & 12, 2002
Visalia, California

BOARD MEMBERS PRESENT :

Stan Dixon, Chairman
Kirk Marckwald, Vice Chair
Mark Bosetti
Robert Heald
David Nawi
Tharon O'Dell
Gary Ryneearson

BOARD STAFF PRESENT :

Daniel R. Sendek, Executive Officer
George Gentry
Executive Officer, Foresters Licensing
Donna Stadler, Executive Assistant
Jim Mote, Regulations Coordinator

DEPARTMENTAL STAFF PRESENT :

Ross Johnson, Deputy Director
Resource Management
Dean Lucke, Assistant Deputy Director
Jerry Ahlstrom, Resource Management

CALL TO ORDER

Chairman Dixon called the September 2002 meeting of the Board of Forestry and Fire Protection to order.

REPORT OF EXECUTIVE SESSION

Mr. George Gentry, Executive Office for Licensing, reported that in Licensing case number 293, Jeffrey Lindsey, RPF 2481, for actions related to four THPs and one exemption involving gross negligence, deceit, and misrepresentation, Mr. Lindsey's license to practice forestry was suspended for 18 months with six months actual suspension and 12 months probation.

MINUTES

Chairman Dixon asked for Board approval of the August 2002 minutes.

02-09-1 Mr. Ryneearson moved to approve the August 2002 minutes as amended. Mr. Bosetti seconded the motion, and all were in favor. Member Nawi abstained from the vote.

CHAIRMAN'S REPORT

Chairman Dixon introduced the newest Board member David Nawi and welcomed him to the Board. He thanked Chief Hillman of the Tulare Unit and Mountain Home Demonstration State Forest Manager Medina for an excellent tour. He then thanked Dan Foster and Linda Sandelin for their presentation regarding archaeological sites on Mountain Home. He also thanked the helitak crews for the beautiful overview of Mountain Home.

REPORT OF THE DIRECTOR

Mr. Ross Johnson welcomed Member Nawi to the Board. He reported that the Director was in Rome as an expert on carbon sequestration. He announced that Cindy Shamrock would be replacing, the recently retired, Elaine Vann as Deputy Director of Management Services as of October 1, 2002.

Mr. Johnson commented that the Governor did not blue line the CDF budget. He reviewed the Director's report in the binder for the Board.

Mr. Johnson noted that the Department has participated in the Water Quality Waiver Workshops and that a Waiver hearing is being scheduled for November. He reported that the 2002 California Urban Forestry Conference was being held here in Visalia over the next three days. This will be the first time the California Urban Forests Council and the California ReLeaf Program have teamed up to present the Annual California Urban Forestry Conference.

REPORT OF THE OAK MORTALITY TASK FORCE

Mr. Mark Stanley, California Oak Mortality Task Force Chair (COMTF), reviewed the news release, contained in the Board's binder, that confirms that Coast redwood and Douglas fir are susceptible to *Phytophthora ramorum*. He reviewed his report from the Board's binder. A copy of that report is available through the Board Office and also on the website for OMTF.

Mr. Stanley reported that there would be a COMTF Sudden Oak Death (SOD) training session in Marin on September 12, 2002. September 21 and 22, 2002, will be the Marin ReLeaf Acorn Harvesting of Coast Live Oak Trees in China Camp State Park for planting in December. He reminded everyone that the Space for Trees SOD/Pitch Canker fundraising golf tournament at Del Monte Golf Course in Monterey would be on September 27, 2002. October 26 through November 18, 2002, "The Art of Saving Oaks" art auction and exhibit will be held in Bay Model, Sausalito. December 16 through 18, 2002, the COMTF meeting and SOD Research Symposium will be held in Monterey.

Ms. Traci Thiele commented about the possibility that the disease is being carried by State Park Rangers. She believes that this could be the most important forestry issue for 100 years, and she expressed her concerns about the transportation of materials spreading the disease. She believes that the Board needs to do something to stop the spread.

PRESENTATION AND REVIEW OF THE CURRENT MOUNTAIN HOME DEMONSTRATION STATE FOREST MANAGEMENT PLAN

Mr. Mark Stanley, Assistant Deputy Director of Resource Management, provided the Board with a draft management plan for Mountain Home Demonstration State Forest. He indicated that most of the changes were editorial. The major point is that Mountain Home is surrounded by the National Monument and the effect that has on the demonstration role. The Department needs to know how to continue with the Sierra Redwoods Management and the Roads Management Plan in the overall Plan. He provided the Board with maps of the area and reviewed them. The Department has prepared amendments; it is up to the Board to decide if the Department leaves the Plan unchanged, directs the Department to go forward with the amendments, or rewrites the Plan.

Mr. Stanley commented that next year the Department would be reviewing the Boggs Mountain and Soquel Demonstration State Forest Management Plans.

There was some discussion.

02-09-2 Mr. Heald moved for the Department to make the minor changes and amendments, as discussed, to the Mountain Home Demonstration State Forest Management Plan. Mr. Rynearson seconded the motion, and all were in favor. Member Nawi abstained from the vote.

REVIEW AND CONSIDERATION OF COUNTY ACTION PLANS ADDRESSING SUDDEN OAK DEATH HAZARD TREE REMOVAL AND DISPOSITION

Mr. Stephen Jones, CDF Pest Management, reported that a subcommittee of the California Oak Mortality Task Force Board reviewed the County of Santa Cruz Sudden Oak Death Hazard Tree Removal Program Plan and recommends that the Board of Forestry and Fire Protection approve the County's plan. He reviewed the Plan for the Board.

There was some discussion.

02-09-3 Mr. Rynearson moved to approve the Plan as presented. Mr. Bosetti seconded the motion, and all were in favor. Member Nawi abstained from the vote.

HEARING TO CONSIDER THE AMENDMENT OF REGULATIONS MODIFYING THE PROCESS BY WHICH ARCHAEOLOGICAL SITES ASSOCIATED WITH TIMBER HARVESTING OPERATIONS ARE ADDRESSED

Mr. Jim Mote, Regulations Coordinator, introduced the topic and provided an overview for the Board. He commented that the package was noticed on July 26, 2002, and cited the affected regulations.

Mr. Daniel Foster, Resource Management/Archaeologist, commented that the Department was in support of the proposed rules. He believes that the changes would greatly improve the Department's ability to enforce the rules for the protection of archaeological sites, as well as provide clarity in several sections. The Department does not believe that the proposed rules would cause substantial additional workload or costs to the regulated public. The proposed rules would provide CDF with the authority to develop, maintain, and distribute the list of Native American contacts, which would relieve the Native American Heritage Commission (NAHC) of that responsibility. The NAHC would continue to be consulted and its advice would be sought in the development of the list. He referred to the NAHC letter of support in the Board's binder.

Mr. Foster indicated that the proposed rules would correct a problem, identified by CDF, concerning the Confidential Archaeological Addendum (CAA) and the Archaeological Records Check request forms. The lack of consistency is a problem that needs to be corrected. The Department believes that the CAA form is not necessary. Deleting this form from the rules would provide the RPF with greater flexibility to present the required information in a variety of formats.

Mr. Foster reviewed the improvements to Sections 929.1, 949.1, and 969.1 within the proposed rules. He commented that the possibility of SB 1828 being signed into law is another reason to adopt this proposal, because the Bill requires consultation and notification, which is consistent with the procedures outlined in this rule proposal.

Mr. Foster commented that the proposed rule changes would include a specific prohibition of timber operations within archaeological sites unless such operations are described in the CAA and made a part of the plan approved by the Director. The proposal would make changes to the minimum information provided to the Department whenever an archaeological site is discovered after plan approval. The Department recommends that the revisions to Section 929.3 be adopted. However, the Department believes that the word "minor," in option one, should be adopted. He called the Board's attention to the CEQA technical guidelines, in the Board's binder, that

mentions “local Native American groups and the NAHC and the sacred lands file maintained by the NAHC” as information sources that need to be checked. Also to the EPIC vs. Johnson decision where the court clarified that it was an error to not notify at least the NAHC when the plan contains a Native American Archaeological site. SB 1828 would amend the PRC Code affecting Native American Sacred Sites. If the Governor signs SB 1828, the Department believes that the amended rules would place the Board and the Department in a position to defend a challenge regarding these requirements.

Mr. Foster referred to a flow chart of RPF tasks for the identification and protection of archaeological sites and reviewed it for the Board.

Mr. Foster noted that on page 19, line 15 of the proposed rules the words “Native American” and “or cultural” should have been underlined. The Department urges the Board to adopt this proposed rules package.

There was some discussion.

Public comment

Ms. Bonnie Burchill, California Licensed Forestry Association (CLFA), commented that CLFA realizes that the purpose of this package was to clean up minor problems with the existing inconsistencies with the rules. The other objective with this package was to bring it into greater compliance with CEQA. She notes that there is a second notification to the Native Americans when a site is actually found on the THP plan area, and just those on the Native American contact list would be notified that a site was present and of the mitigation measures to protect that site without disclosing it. A major change in the package was the definition of the Native American Contact List. The gatekeeper of the list is of concern. CDF will be in control of that list and it will be published on the worldwide web. However, CLFA has concerns that the control of the list could fluctuate. The list is also tied to the cultural site because if additional sites are discovered, everyone on the list needs to be notified. The cultural site has had a definition change that it will be anything that has physical attributes. She questioned the different interpretations of cultural and sacred sites. She wanted to know where the burden of proof lies. CLFA believes that it would be better if a site were recorded before the plan was approved.

Mr. Keith Greenwood referred to his letter to the Board and commented that the intent of the proposed rules is good, but could be simplified. He read portions of his written comments into the record.

Mr. Richard Gienger believes that the proposed package corrects some of the process, but that there are still problems. There needs to be some clarification. He referred to page 19 and believes that the word “minor” should be deleted. He urged the Board adopt Option two. He commented that there are some inconsistencies and a problem with the timing of Native American notification. Notification does not constitute consultation. The notification should be before recording of the site.

Mr. Mark Rentz, California Forestry Association (CFA), commented that CFA opposes the package unless “sacred site” is stricken. He believes that CDF would be in a position to determine what is and what is not sacred. SB 1828 does not define sacred site. CFA believes that there will be a struggle amongst agencies on the term.

Mr. Paul Violet, Soper-Wheeler, commented that Soper Wheeler believes that “sacred site” should be deleted. He believes that the proposed package is very complex, and that the paperwork should be reduced.

02-09-4 Mr. Heald moved to close the public hearing. Mr. O'Dell seconded the motion with the understanding that Board members may continue to address questions to members of the public, and all were in favor.

Mr. O'Dell wanted to know if the RPF was obligated to use the most current list at time of plan preparation.

Mr. Foster replied that the RPF is obligated to use the most current list.

Mr. Ryneason wanted to know why the site record request had to be completed prior to the Pre-harvest Inspection (PHI).

Mr. Foster indicated that it was necessary to have the site record at the time of the PHI to properly evaluate the impact.

Mr. Heald noted that under CCR 929.1(6), only records of significant sites need be submitted—the site record is not required for non-significant sites.

Mr. Bosetti wanted to know how frequently the list would be changed.

Mr. Foster reviewed the history of the changes to the Native American list for the Board. He commented that it would be changed at least twice a year and that it would be hard to predict the actual number of changes.

Mr. Bosetti wanted to know if those on the contact list have any idea of the magnitude of the paper they would receive.

Mr. Foster indicated that the current list has been in place since 1991. The definition of Native Americans is being changed and including a new definition of a contact list that would include all of the federally recognized tribes. The Native Heritage Commission has given CDF the permission to publish the list on the web.

Mr. Bosetti wanted to know if the list that was published at the time of plan preparation would be the one in effect.

Mr. Foster replied that it would.

Mr. Ryneerson wanted to know the difference, under the current standards, between a sacred site and a traditional cultural property.

Mr. Foster commented that the traditional cultural properties could include the kinds of resources that are not sacred, but reflect traditional Native American practices.

Mr. Marckwald wanted clarification on current legislation regarding sacred sites.

Mr. Bruce Reeves, Deputy Attorney General and Board's Counsel, the version of SB 1828 that has gone to the Governor's desk includes the definition of sacred sites. He then read Section 21067.5 into the record defining sacred sites.

Mr. Marckwald referred to the question on page 22 regarding new underlined language and whether that would require a 15-Day Notice.

Mr. Reeves commented that the Board is within Title 1, CCR, §40 regarding substantiality and also within the regulation concerning the subject matter. It would not require a 15-Day Notice if that were the only change to the current notice.

Mr. O'Dell wanted to know if the term "oral histories" had been dealt with in the definition inclusion in the work to date in determining the religious importance to tribes, and has it been used to document the relative sacredness of any area—oral history vs. physical or geophysical.

Mr. Foster said that has been dealt with through criterion E sites. Elders of a tribe often provide oral historical evidence. The Department's position is to consider such evidence in the plan.

There was further discussion regarding sacred sites and cultural sites.

02-09-5 Mr. Ryneerson moved to re-notice the package with an Option One, to include sacred sites; and an Option Two, to remove them. Once the Governor signs or vetoes SB 1828, this Board would have a better idea of how it wants to proceed.

Mr. Heald commented that delaying in making a decision would accomplish the same thing without re-noticing.

Mr. Ryneearson restated his motion to delay action on the package until the October Board meeting. Mr. O'Dell seconded the motion.

Mr. Nawi commented that it was his understanding that without the reference to the term sacred site, this regulation would have to be implemented with reference to sacred sites because of the language "including but not limited to". Therefore, he believes that the Department would have to address sacred sites.

Mr. Marckwald commented that if the Governor signs SB 1828, then there is a definition in state law; if he does not sign it, the Department would have to address the issue anyway. He saw no reason for waiting 30 days, and was willing to support the package as in Member Ryneearson's original motion.

Chairman Dixon wanted to know if that was with sacred sites in the language.

Mr. Marckwald said that it would.

Mr. O'Dell commented that it was a comfort issue for him. He agrees that with or without the language, it is a matter that would have to be dealt with. But he would not be comfortable until there is clarification on the definitions.

Mr. Ryneearson believes that if the Governor does sign the bill, then there would be a clear definition of what sacred sites means.

Chairman Dixon commented that he did not see the conflict in leaving the language in.

Mr. Bosetti indicated that he would be prepared to vote on a motion that would exclude that language.

Mr. Ryneearson reiterated his motion that the package be delayed until the October Board meeting.

Chairman Dixon asked for a roll call vote.

Bosetti	Nay
Heald	Nay
Marckwald	Nay
Nawi	Nay
Ryneearson	Aye
O'Dell	Aye
Dixon	Nay

The motion failed with a 5-2 vote.

02-09-6 Mr. Heald moved that the package be adopted as noticed with the inclusion of the Department's suggested recommendation on page 19 for Option One and on line seven and line 14 as appropriate. Mr. Marckwald seconded the motion, and a roll call vote was taken.

Bosetti	Nay
Heald	Aye
Marckwald	Aye
Nawi	Aye
Ryneearson	Nay
O'Dell	Nay
Dixon	Aye

The motion failed with a 4-3 vote.

Chairman Dixon wanted to know if there was another possibility.

02-09-7 Mr. O'Dell moved that the sacred site language be deleted and move the package today. This would be the same as Member Heald's motion, but without the sacred site language.

Mr. Reeves commented that full notice would be needed for deleting that language.

Mr. Marckwald believed that the motion was just not to adopt the change as proposed. He commented that Member O'Dell's motion was not to adopt the proposed change, which has the effect of deleting.

Mr. Bosetti seconded Member O'Dell's motion.

There was some discussion regarding clarity of the motion.

Mr. O'Dell reworded his motion as follows: To accept the changes on page 19, line 7 and line 14 and not to accept the two words on the top of page 3 line; "sacred sites."

Mr. Heald commented that due to noticing requirements, this motion would prevent the Board from including the term sacred sites for another year.

Mr. Rynearson commented that if SB 1828 is signed into law by the Governor, then those two terms would prevail.

Mr. Reeves commented that the definition of Native American Archaeological or Cultural Site, as noticed for today, included sacred sites. He questioned whether the Board could expel from that change the term of sacred sites without another notice.

Chairman Dixon wanted to know if Counsel believed that such a change would require a 15-Day or a 45-Day Notice.

Mr. Reeves indicated that a 45-Day Notice would be preferable. If the concern is the over inclusiveness of sacred sites in the new Senate bill, it would be difficult for the Board to then say that it is not a major change.

Mr. O'Dell withdrew his motion.

Mr. Bosetti did not believe that the Board is defining what a sacred site is. The sacred site falls in a section where the Board is defining Native American Archaeological or cultural sites and it is prefaced by "included, but not limited to" and these are used as examples. Therefore, he believed that sacred sites was being included as an example.

Mr. Heald commented that similar motions have been made before and have had to go through the Administrative Procedures Act for declining to adopt a portion of a motion.

Mr. Reeves indicated that arguments could be made that this should be subject to a 45-Day Notice, however, it may be possible to take care of it as a 15-Day item.

Mr. Heald commented that the public hearing is closed and if the Board cannot make a decision today with five affirmative votes, the Board can try again next month.

Mr. Nawi agreed with Member Heald.

02-09-8 Mr. Nawi moved for re-consideration of Member Rynearson's motion to put the item over until the October Board meeting, and obtain a report on the status of SB 1828. Mr. Rynearson seconded the motion, and a roll call vote was taken.

Heald	Aye
Marckwald	Aye
Nawi	Aye
Rynearson	Aye
O'Dell	Aye
Bosetti	Aye
Dixon	Aye

The motion passed unanimously.

HEARING TO CONSIDER AMENDMENT OF SECTION 1058.5, TITLE 14 OF THE CALIFORNIA CODE OF REGULATIONS, ADDRESSING TIME PERIOD IN WHICH THE BOARD MUST ACT ON A PROPOSED DECISION BY AN ADMINISTRATIVE LAW JUDGE IN AN ADMINISTRATIVE CIVIL PENALTY ACTION

Mr. Jim Mote, Regulation Coordinator, introduced the topic and noted that the proposed package provides for a 60-day time period for the Board to review decisions by the Administrative Law Judge.

Mr. Bruce Reeves, Deputy Attorney General and Board's Counsel, provided additional background for the Board and indicated that it would be necessary to re-open the public hearing and re-vote on the package. The package needed re-noticing due to a failure in meeting all of the noticing requirements. He noted that the new re-noticed package was identical to the originally noticed one. The first resolution to this matter needed to be set aside and readopted.

Mr. Dennis Hall, Resource Management, commented that the Department was in support of the package as noticed.

No comments from other agencies and there were no public comments.

02-09-9 Mr. Rynearson moved to close the public hearing. Mr. Bosetti seconded the motion, and all were in favor.

02-09-10 Mr. Rynearson moved to set aside the previous decision and adopt the package currently before the Board. Mr. Marckwald seconded the motion, and a roll call vote was taken.

Marckwald	Aye
Nawi	Aye
Rynearson	Aye
O'Dell	Aye
Bosetti	Aye
Heald	Aye
Dixon	Aye

The motion passed unanimously.

Mr. Bruce Reeves, Deputy Attorney General and Counsel for the Board, indicated that due to the hour and the remaining agenda items, it would be necessary to adjust the Board's agenda.

Chairman Dixon noted that due to time constraints, Member Heald would report on the Interim Committee's discussion regarding the Lake Tahoe Exemption and any recommendations it may have. All other Committee reports would be deferred until the October meeting.

INTERIM COMMITTEE REPORT

Mr. Heald reported that under New and Unfinished Business the Committee discussed the issue of the Tahoe 1038 exemption, which is a special exemption for the Lake Tahoe Basin put together by a consensus group. It

has been in place as regulation and functioning for seven years. The Department believes that it is still a valid and useful tool. The Committee recommended that the Board send out for a 45-Day Notice to delete the sunset date so that the regulation would continue to be effective. If some time in the future, the consensus group decides that the regulation is no longer necessary, the Board could take action to delete the regulation by another notice. He noted that the recommendation was by a consensus of the Committee.

02-09-11 Mr. Heald moved to send out a 45-Day Notice to delete the Sunset-date clause in Title 14, CCR § 1038(f), of the Lake Tahoe Exemption. Mr. Rynearson seconded the motion, and all were in favor.

INITIAL HEARING OF THE APPEAL FILED BY THE COUNTY OF SANTA CRUZ IN OPPOSITION TO THE DIRECTOR'S APPROVAL OF TIMBER HARVESTING PLAN 1-00-247 SCR MAJOR AMENDMENT NO. 1.

Mr. Bruce Reeves, Deputy Attorney General and Counsel for the Board, reviewed the procedure for presenting an appeal of a THP to the Board.

Mr. Mark Deming, Planning Department of Santa Cruz County, referred to the County's letter requesting an appeal of the Director's approval of THP 1-00-247 SCR Major Amendment No. 1, and reviewed it for the Board. The Santa Cruz Regional Director, views this issue as a civil matter and that of the right-of-way and the right of access onto Valley View Drive by the plan submitter was for the purpose of the timber harvest. The road is open to the public. However, there is evidence that it is a private road. Santa Cruz counsel has reviewed this plan and believes that those areas of private roads that are improved with public monies are open to the public. However, the portion of the road in question has not been improved and no public funds have been expended. In Section 1035(b) of the Forest Practice Rules, it is the responsibility of the submitter to submit complete and correct information regarding legal rights to the RPF. There is also a landslide issue on the proposed haul route. Santa Cruz County believes that some geo-technical information is necessary. The County believes that the grounds for this appeal are public safety.

Chairman Dixon commented that there was nothing in the petition to indicate that it is a request from the County Board of Supervisors (BOS).

Mr. Deming referred to a letter authorizing the Planning Department to act on behave of the BOS during their recess if plans of significance were approved. They do not typically provide a resolution.

Mr. Reeves pointed out that because there was no resolution from the County, he believes that it could prove to be in violation of the Brown Act.

Mr. Deming referred to the June 25, 2002, memorandum that provides specific authority to act on the BOS' behalf. He commented that this method has been used in the past.

Mr. Heald commented that he believes that Santa Cruz County has acted in good faith.

Mr. Reeves reviewed the statute for the Board and again expressed his concern that there was no Resolution. He commented that there are no findings and he would recommend denial of the petition.

There was further discussion on procedure.

Mr. Bill Snyder, CDF, provided the Board with the Department's written comments dated September 12, 2002. He reviewed the reasons for the Director's approval of Major Amendment No. 1 to THP 1-00-247 SCR. He reviewed that letter for the Board. He commented that the Department believes that it has dealt with the public health and safety issue.

Mr. Norm Hill, Chief Counsel for CDF, commented that the Department does not have judicial authority, therefore, does not rule on disputes. CDF chose to see if an argument existed for access right-of-way. The decision on claim is not within CDF's jurisdiction. The Department reviewed the package and the claim for access rights did exist.

Mr. Ryneerson wanted to know what was standard to grant a hearing.

Mr. Reeves referred to 14 CCR §1055.1 as being standard for substantial issues to public health and safety or the environment.

Mr. Kevin Collins expressed concern that the repair of the slide area would damage his property.

Mr. Marckwald commented that the road issue is not before the Board at this time.

02-09-12 Mr. Marckwald moved to deny the appeal filed by the County of Santa Cruz in opposition to the Director's approval of THP1-00-247 SCR, pursuant to 1055.1. Mr. Ryneerson seconded the motion, and a roll call vote was taken.

Mr. Heald commented that there was little evidence that there were contentious issues during the review process.

Heald	Aye
Marckwald	Aye
Nawi	Aye
Ryneerson	Aye
O'Dell	Aye
Bosetti	Aye
Dixon	Aye

The motion passed unanimously.

HEARING TO CONSIDER THE AMENDMENT OF REGULATIONS THAT DETAIL FACTORS TO BE ADDRESSED IN CUMULATIVE IMPACTS ASSESSMENT

Mr. Jim Mote, Regulation Coordinator, noted that the proposed amendment was noticed on July 26, 2002, and addressed Hardwoods and Technical Addendum Number Two. It added elements to Sections 932.9 and 952.9 of Title 14 of the California Code of Regulations for consideration.

Mr. Dennis Hall, Resource Management, commented that the Department was in support of the proposed changes to the package.

Mr. Marty Berbach, Department of Fish and Game (DFG), referred to the August 22, 2002, DFG letter which supports the package, but DFG has a few recommendations. DFG would like to extend to the Coast District 912.9 for biological reasons. DFG recommends that the noticed language be placed in the subsection (1), deciduous oaks. And on lines 10 and 11, DFG believes that replacing "should" with "shall" would strengthen the rule language.

Mr. Kevin Collins commented that he hoped this regulation would lead to retention standards.

Mr. William Hultgren, California Licensed Forestry Association (CLFA), commented that CLFA believes that this amendment is an unnecessary embellishment to existing language; however, it does provide more detail regarding hardwood management and should be adopted.

Mr. Richard Gienger urged the passing of the proposed language with the additions by DFG.

02-09-13 Mr. Heald moved to close the public hearing. Mr. O'Dell seconded the motion, and all were in favor.

Mr. Ryneason commented that he believes that line 7 continuing to line 8 was a document imbedded within a regulation with a date on it. He wanted to know how the Office of Administrative Law (OAL) would receive this document.

Mr. Bruce Reeves, Deputy Attorney General and Board's Counsel, said that to the extent that it is a reference to an existing law, it should not be an issue.

Mr. Heald wanted to know if the date on the document was appropriate since it is possible that the Board may renew the policy and possibly amend it from time to time.

Mr. Reeves commented that if the date were included, it would need to be periodically updated.

Mr. Nawi referred to lines 9, 10, and 11, and wanted to know if changing "should" to "shall" would be an issue of clarity for OAL.

Mr. Reeves commented that "should" would be okay, but there are no guarantees.

Mr. Heald commented that "should" reads that way because it is in a Technical Rule Addendum, and to that extent, landowners do not always have the capacity to conform to "shall." He then wanted to know if adding the extension to the Coast District would require a 45-Day Notice.

Mr. Reeves stated that it would.

02-09-14 Mr. Heald moved to adopt the package as noticed, and the suggestions presented by DFG go to the Committee for review.

Mr. Bosetti wanted to know about the discussion, in Committee, regarding "ecologically sustainable."

Mr. Heald commented that the intent was that most foresters review management over time, which requires regeneration and replacement of sizes and ages and distribution so that there is a viable population that does not fluctuate radically.

Mr. O'Dell commented that in the discussions there were no specific age class and vegetation types. It was a conceptual consensus that all systems growing vegetation have a certain capacity to do that.

Mr. Ryneason believed that all of the elements were already contained in the document being considered. He suggested using the word "maintained" instead of "retained."

Mr. Heald commented that several different words could be used. Oaks are not harvested at a particular rotation age, but to include stand age elements that provide functional wildlife habitat that are beyond some wood product quality level. Eventually regeneration becomes necessary, because there needs to be replacement for anything to be sustainable.

Mr. O'Dell noted that it was intent language that is conditioned by the word "should" and that it is perfectly acceptable as written.

Chairman Dixon wanted to know if these issues were raised during Committee discussions.

Mr. Heald replied that there was. In a cumulative impacts section, when directing a disclosure and discussion document for information in terms of cumulative effects over time, the "should" word was appropriate. With respect with the Coast District the comments focused on the mixed conifer vegetation. There was a conscientious effort not to include 912.9 in this package.

Mr. Marckwald seconded Member Heald's motion, and a roll call vote was taken.

Bosetti Aye

Heald	Aye
Marckwald	Aye
Nawi	Aye
Rynearson	Aye
O'Dell	Aye
Dixon	Aye

Motion passed with a unanimous vote.

HEARING TO CONSIDER AMENDMENT OF REGULATIONS SPECIFYING MINIMUM STOCKING LEVELS FOLLOWING TIMBER HARVESTING

Mr. Jim Mote, Regulations Coordinator, provided an overview for the Board. He noted that a 15-Day Notice had been sent out for public review on August 26, 2002.

Mr. Dennis Hall, Resource Management, commented that the Department was in support of the changes as noticed and appreciates the Board's consideration of the Department's comments.

Mr. Marty Berbach, Department of Fish and Game (DFG), reported that the DFG supports the changes as noticed.

Mr. Roy Richards, RPF, referred to page two, line two and commented that the Section symbol should be added after the CCR; on the same line, sub-section (a) was used and it should have been sub-section (b). He noted that those corrections would apply on all the other sections. He believes that the 15 and 12 square feet of basal area is an improvement and he could support that. However, he rejected the decaying and snag portion of the proposed rule. He read Public Resources Code, §4528 (b) 2 into the record. He recommended that the definitions in 14 CCR §891 for decaying and snags and §912.7(b) on page one sub-section (3) a, b, & c be struck, which would make sub-section (c) unnecessary and that would make sub-section (d) revert to sub-section (c).

Mr. William Hultgren, California Forestry Association (CLFA), commented that CLFA has reservations about using inferior trees to determine stocking. However, CLFA supports the overall concept of having wildlife diversity in the management of the forest. This rule now allows for the use of larger trees for that purpose.

Mr. Richard Gienger urged the Board to approve the package with the caveat that snags do not qualify.

Mr. Dan Weldon, Forest Landowners of California (FLOC), said that FLOC supports the package. He expressed an interest in working with the Board in the coming year to include smaller trees in stocking standards.

Mr. Paul Violet, Soper-Wheeler, thanked the Board for taking action on this issue.

02-09-15 Mr. Marckwald moved to close the public hearing. Mr. Heald seconded the motion, and all were in favor.

Mr. Heald commented that this proposed rule goes beyond minimum standards.

Mr. Rynearson wanted to know if hardwoods were included.

Mr. Heald replied that trees could be counted as decadent regardless if they are conifer and hardwood as long as they meet the size requirements.

Mr. Rynearson asked if the whole package was before the Board for consideration or just the changes in the 15-Day Notice.

Mr. Heald commented that the whole package was to be considered since it had not previously been voted on.

Mr. Ryneanson noted for clarification, that where minimum stocking stands with selection harvesting was involved, the minimum, per 14 CCR §912.7(b), would be 50 square feet per acre.

Mr. Heald agreed as long as they meet the size requirement of specific size class that are listed.

Mr. Ryneanson expressed concern about the Board's inconsistency.

Mr. Bosetti expressed his concern that the loss of productivity has not been addressed with this decision. He had reservations about the live healthy tree classification and could not in general support this package.

Mr. O'Dell commented that he was not in favor of reducing standards. However, this is voluntary, no one is making the landowner make up the additional stocking with these guidelines. If a landowner wanted to adhere to a higher standard, there is no reason not to. This package allows a choice.

Mr. Heald commented he shares Member Bosetti's concerns. The Board may find mechanisms to encourage landowners to carry a higher level of green tree stocking that will, in time, produce a higher level of productivity. Our standards do not produce the maximum, but landowners are granted the option of pursuing various alternatives. He expressed an interest in finding incentives for landowners to increase their level of green tree stocking during next year's sessions.

02-09-16 Mr. Heald moved to adopt the package with the editorial changes on page two, line two, adding the Section symbol after the CCR; and the typographical error referencing 912.7 (a) instead of (b), and the subsequent changes throughout the package. Mr. Marckwald seconded the motion, and a roll call vote was taken.

Bosetti	Nay
Heald	Aye
Marckwald	Aye
Nawi	Pass
Ryneanson	Nay
O'Dell	Aye
Dixon	Aye

The motion fails by a 4-2 vote.

Mr. Ryneanson wanted to offer an alternative motion.

02-09-17 Mr. Ryneanson moved to adopt the same motion as Member Heald's, but with site II lands and size limits included. There was no second for this motion.

Chairman Dixon wanted to know if Member Nawi's pass differed from an abstention?

Mr. Nawi said that his pass was meant to be a placeholder, and that he would now like to go back and support Member Heald's motion.

Mr. Bruce Reeves, Deputy Attorney General and Board's Counsel, commented that he believes it would require a re-consideration of the motion.

02-09-18 Mr. Marckwald moved for a re-consideration of the Stocking Standards Amendment. Mr. Heald seconded the motion, and a roll call vote was taken.

Bosetti	Nay
Heald	Aye
Marckwald	Aye
Nawi	Aye

Rynearson	Aye
O'Dell	Aye
Dixon	Aye

The motion passed by a 6-1 vote.

CONSIDERATION OF THE RECOMMENDATION BY THE NOMINATION REVIEW COMMITTEE FOR THE 2002 FRANCIS H. RAYMOND AWARD

Mr. George Gentry, Executive Officer for Licensing, reported that the Nomination Review Committee met on July 16, 2002, and recommends that the Board approve the Committee's choice of William M. Beaty to receive the Francis H. Raymond Award for his numerous contributions and service to the citizens of California.

02-09-19 Mr. Rynearson moved to approve William M. Beaty as the 2002 recipient of the Francis H. Raymond Award. Mr. Bosetti seconded the motion, and all were in favor.

HEARING TO CONSIDER THE AMENDMENT OF CURRENT INTERIM REGULATIONS THAT ADDRESS TRACTOR OPERATIONS, ROADS, LANDINGS, WATERCOURSE CROSSINGS, SOIL LOSS REDUCTION AND EROSION CONTROL MAINTENANCE

Mr. Jim Mote, Regulations Coordinator, introduced the topic and reviewed the proposal for the Board.

Mr. Dennis Hall, Deputy Chief of THP Administration, reviewed the Department's letter and its comments. CDF supports the direction the Board is moving in, however, the Department provided suggestions regarding the clarity of the proposed language and its consistency with other rule sections. He noted several instances where existing language was incorrectly depicted, and several typographical errors.

Mr. Hall reviewed other specific concerns regarding the proposed revisions. The bullet points, within the Director's letter, were Saturated Soil Conditions, Waterbreaks, Tractor Road Watercourse Crossing, and Reduction of Soil Loss.

Mr. Marty Berbach, Department of Fish and Game (DFG), referred to Director Hight's letter containing the DFG comments and reviewed them for the Board.

Chairman Dixon asked that the Board to consider DFG's comments.

Mr. Bosetti wanted to know if it was necessary to go through the normal cycle of the hearing. He believes that this should go back to Committee.

Chairman Dixon said that if there was a consensus, the Board could accept the written comments from DFG, hear public comment and if the Board does not reach an agreement today, then continue the hearing until October.

Mr. Rynearson commented that this package was a part of the Threatened and Impaired (T & I) rules. These rules still apply for the remainder of 2003 through the T & I package. If a rule package for Roads is not adopted this year, these rules, as the Board has extended them, are in effect through December 31, 2003.

There was some procedural discussion.

Mr. Joe Blum, representing NOAA Fisheries, commented that the package is a good effort. NOAA supports the package with the DFG amendments. He expressed his appreciation for the effort the Board has made, but believes that sending the package back to Committee would be a good move.

Mr. Ross Johnson, Deputy Director of Resource Management, indicated that the Department, also, believes that the package should go back to Committee.

Public comment

Mr. Roy Richards referred to his written comments.

Mr. William Hultgren, California Licensed Foresters Association (CLFA), provided a copy of the CLFA written comments and reviewed them for the Board. He commented that CLFA supports the core values behind this package, but believes that the cost of monitoring is too much for landowners. There was not adequate justification for sport fisheries. He suggested redoing the economic analysis.

Ms. Bonnie Burchill, CLFA, commented that sending the package back to Committee would be the best decision. CLFA believes that there are several items in error and should be revisited.

Mr. Robert Di Perna, EPIC, commented that the Threatened & Impaired are good rules, but do not go far enough. EPIC supports sending the package back to Committee.

Mr. Richard Gienger believes that the package should go back to Committee to address water quality issues.

Mr. Mark Rentz, California Forestry Association (CFA), commented that CFA was concerned about the statewide application and the lack of fish data.

Mr. Dan Weldon, Forest Landowners of California (FLOC), believes that this package would be more costly for the small landowner. It is the hope of FLOC that the Board will keep the small landowner in mind next year.

Mr. Kevin Collin, Watershed Conservancy, commented that on page 11, the in-lieu practices are not good. He expressed his concerns regarding road issues on page 14.

Ms. Traci Thiele, Humboldt Watershed Council (HWC), believes that the package should go back to Committee and suggested that the Board look at the Environmental Protection Agency letter to Water Quality.

02-09-20 Mr. Heald moved to close the public hearing. Mr. Nawi seconded the motion, and all were in favor.

Chairman Dixon wanted to know if it was the consensus of the Board to refer the package back to Committee.

The Board agreed to send the package back to Committee.

PUBLIC FORUM

Mr. Robert Di Perna, EPIC, commented on the THP process and Water Quality Non-concurrence letters. He noted that there were five Head of Agency appeals to Water Quality, not to the Board. He believes that there needs to be another mechanism between the Review Team and the RPF, and that the system is broken.

Mr. Dan Weldon announced that the Family Forest Field Day would be held on September 21, 2002, at the Abel Tree Farm in Cohasset. He commented that the Board members were welcome.

Mr. Richard Gienger wanted to know if there would be any public comments accepted next month regarding the Archaeology hearing. He believes that the public needs assurances of public trust protection. Regarding SB 234, he does not believe that the public trusts the Board.

Mr. Marckwald indicated that the public could provide comments, but only if it was new information.

Mr. Traci Thiele welcomed Member Nawi to the Board. She commented that sacred sites should be decided by CDF. She believes that the South Fork Eel River is toxic and needs a new listing.

Mr. Scott Johnson, California Forest Pest Council, commented that he will submit his report in writing for the record.

ADJOURNMENT

Chairman Dixon adjourned the meeting at 4:10 p.m.

Respectfully submitted,

ATTEST:

Daniel R. Sendek
Executive Officer

Stan Dixon
Chairman

Copies of the attendance sheets can be obtained from the Board Office.